

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Joseph R. Francis,)	Case No. CV 09-8521-VBF(RZx)
Plaintiff,)	STANDING ORDER
v.)	
United States of America,)	
Defendants.)	
_____)	

This case has been assigned to the calendar of Judge Valerie Baker Fairbank. Read this order carefully. It controls this case and adds to the Local Rules in some respects. IT IS SO ORDERED:

1. **SERVICE.**

Counsel for Plaintiff shall immediately serve this order on all parties. If this case was removed from state court, the defendant who removed the case shall immediately serve this order on all other parties.

2. **GENERAL MATTERS.**

a. **Compliance with FRCP, Local Rules, and Standing Orders.** At all stages of the proceedings, the parties and counsel are expected to comply with the Federal Rules of Civil Procedure ("FRCP"), Local Rules and this Court's orders. Counsel are referred to the Court's website for further information regarding procedures. See www.cacd.uscourts.gov > Judges' Procedures and Schedules > Hon.

1 Valerie Baker Fairbank. Counsel are further advised to review and adhere to the
2 Central District's Civility and Professionalism Guidelines.

3 b. **Communications with Chambers.** Counsel shall not attempt to contact
4 the Court or chambers staff unless responding to an inquiry they initiated. Counsel
5 may contact the courtroom deputy clerk with appropriate inquiries (213-894-0066).
6 To facilitate communication with the courtroom deputy clerk, counsel should list
7 their e-mail addresses, facsimile number, and telephone number on all papers. See
8 L.R. 11-3.8.

9 c. **Mandatory Chambers Copies.** Conformed mandatory chambers copies
10 of all papers filed with the Court, including those filed electronically, shall be
11 delivered on the next day of filing, by 12 noon, to the drop box outside the Chambers
12 of Judge Valerie Baker Fairbank. The Judge's Chambers are located at the end of the
13 hallway, past the courtroom.

14 d. **Presence of Responsible Counsel.** The attorney attending any
15 proceeding before this Court must be an attorney who is thoroughly knowledgeable
16 about the case, responsible for the conduct of the litigation, and who has authority to
17 enter into stipulations and to make admissions.

18 e. **Telephonic Appearances.** The Court believes it is productive for
19 counsel to appear personally at motion hearings and Scheduling Conferences. An
20 attorney requesting a telephonic appearance should file and serve a written notice of
21 telephonic appearance at the earliest possible date, but no later than five days prior to
22 the scheduled hearing or conference, absent an emergency.

23 3. **PARTIES' 26(f) PLANNING MEETING.**

24 Counsel shall adhere to FRCP 26. No later than 14 days before the date of the
25 Scheduling Conference, counsel for all appearing parties and/or all unrepresented
26 appearing parties shall file a joint "Report of the Parties Planning Meeting." This
27 report shall address the subjects in Rule 26(f)(1) – (4) and the following:

28 a. **Jurisdiction.** The basis for subject matter jurisdiction.

1 b. **Claims and Defenses.** The report shall include a concise statement of
2 the factual and legal basis of the claims and defenses.

3 c. **Discovery Cut-Off.** The report shall propose a date by which all
4 discovery shall be completed. If the parties anticipate calling expert witnesses, they
5 shall propose a schedule for the completion of discovery directed at expert witnesses.

6 d. **Trial Matters.** The report shall propose dates for the Final Pre-Trial
7 Conference and Trial; a realistic estimate of the number of court dates required to
8 present each side's case-in-chief; and whether trial is to be by jury or the Court.

9 e. **Anticipated Problems.** The report shall address major procedural or
10 evidentiary problems, if any.

11 f. **Settlement.** The report shall address prospects of settlement and
12 propose a date and procedure for compliance with Local Rule 16-15.

13 4. **DISCOVERY.**

14 a. **Compliance with Rule 26(a) & (f).** The Court expects and orders that
15 counsel participate in the meeting required by Rule 26(f) as soon as possible, and that
16 initial disclosures be made promptly after that meeting and before the Scheduling
17 Conference set by the Court. Rule 26(a)(1)(C). Counsel are also directed to
18 commence discovery promptly after their Rule 26(f) meeting, and if possible, before
19 the Scheduling Conference. Rule 26(d)(1). It is advisable for counsel to begin
20 discovery and conduct it actively at the earliest possible time because they will have
21 limited time to complete discovery after the Court's Rule 26(f) Scheduling
22 Conference. Early meeting, disclosure and discovery is particularly important in
23 certain cases such as class actions where Local Rule 23-3 requires that within 90 days
24 after service of a pleading purporting to commence a class action, the proponent shall
25 file a motion for certification, unless otherwise ordered by the Court.

26 b. **Discovery Motions.** All discovery disputes have been referred to the
27 assigned magistrate judge. All discovery documents must include the words
28 "DISCOVERY MATTER" in the caption to ensure proper routing. Counsel should

1 contact the magistrate judge's courtroom deputy clerk to schedule hearings. Counsel
2 should not deliver courtesy copies of discovery-related documents to this Court.

3 **5. EX PARTE APPLICATIONS.**

4 Ex parte applications are solely for extraordinary relief and are rarely justified.
5 See Mission Power Engineering Co. v. Continental Casualty Co., 883 F. Supp. 488
6 (C.D. Cal. 1995). Applications must be filed in the Clerk's office. Ex parte
7 applications are normally considered on the papers. Applications that fail to conform
8 to Local Rules 7-19 and 7-19.1, including a statement of opposing counsel's position,
9 will not be considered except on a specific showing of good cause.

10 In addition to the requirements of Local Rules 7-19 and 7-19.1, the moving
11 party shall, following service of the ex parte papers by facsimile transmission or
12 personal service, notify the opposition that opposing papers must be filed no later
13 than twenty-four hours (1 court day) following service, except in cases where the
14 opposing party has not previously appeared (i.e. responded to the Complaint). In
15 those cases where the opposing party has not previously appeared, the moving party
16 shall, following service of the ex parte papers by facsimile or personal service, notify
17 the opposition that opposing papers must be filed no later than forty-eight hours (2
18 court days) following service.

19 **6. CASES REMOVED FROM STATE COURT.**

20 All documents filed in state court, including documents appended to the
21 complaint, answers and motions, must be refiled in this Court as a supplement to the
22 notice of removal, if not already included. See 28 U.S.C. § 1447(a) and (b). If,
23 before the case was removed, a motion was pending in state court, it must be
24 re-noticed in accordance with Local Rule 7. If an action removed to this Court
25 contains a form pleading, i.e. a pleading in which boxes are checked, the party or
26 parties that filed the form pleading must file an appropriate pleading with this Court
27 within 30 days of receipt of the notice of removal.

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1 **PATENT CASES.**

2 With minor modifications, the Court follows the Northern District of
3 California Patent Local Rules (version effective 3/1/2008) in all patent cases.
4 Counsel are referred to the Court's website for more information and a modified copy
5 of the Rules. See www.cacd.uscourts.gov > Judges' Procedures and Schedules >
6 Hon. Valerie Baker Fairbank.

7 **FICTITIOUSLY NAMED DEFENDANTS.**

8 This Court adheres to the following procedures when a matter is removed to
9 this Court on diversity grounds with fictitiously named defendants referred to in the
10 complaint. See 28 U.S.C. §§ 1441(a) and 1447. Plaintiff shall ascertain the identity
11 of and serve any fictitiously named defendants before the Scheduling Conference.
12 Doe defendants not served by the date of the Scheduling Conference will be deemed
13 dismissed.

14 **GENERAL MOTION REQUIREMENTS.**

15 a. **Time for Hearing Motions.** Motions shall be filed in accordance with
16 Local Rule 7. Motion dates need not be reserved in advance. This Court hears
17 motions on Mondays at 1:30 p.m.

18 b. **Pre-filing Requirement.** Counsel must comply with Local Rule 7-3,
19 which requires counsel to engage in a pre-filing conference "to discuss thoroughly ...
20 the substance of the contemplated motion and any potential resolution."

21 c. **Length and Format of Motion Papers.** Memoranda of points and
22 authorities in support of or in opposition to motions shall not exceed 25 pages.
23 Replies shall not exceed 12 pages. Only in rare instances and for good cause will the
24 Court grant an application to extend these page limitations. If documentary evidence
25 in support of or in opposition to a motion exceeds 50 pages, the Court's mandatory
26 chambers copy of all evidence shall be placed in a binder, including a Table of
27 Contents, with each item of evidence separated by a tab divider. Typeface shall
28 comply with Local Rule 11-3.1.1. Footnotes shall be in typeface no less than one

1 size smaller than text size.

2 d. **Calendar Conflicts.** Counsel are to inform opposing counsel and the
3 courtroom deputy clerk as soon as a potential calendar conflict is discovered.
4 Counsel should attempt to agree on a proposed date to accommodate the calendar
5 conflict and the schedules of the counsel and the Court.

6 e. **Requests to Take Matters Off-Calendar.** Requests to continue a
7 motion or to take it off-calendar must be communicated to the courtroom deputy
8 clerk as soon as possible. For example, if a case settles, the courtroom deputy clerk
9 should be notified immediately so as to avoid the waste of judicial time and
10 resources.

11 10. **SPECIFIC MOTION REQUIREMENTS.**

12 a. **Motions Pursuant to Rule 12.** Many motions to dismiss or to strike
13 can be avoided if the parties confer in good faith, especially for perceived defects in a
14 complaint, answer or counterclaim that could be corrected by amendment. Moreover,
15 a party has the right to amend the complaint "once as a matter of course" before a
16 responsive pleading is served. FRCP 15(a)(1). A Rule 12(b)(6) motion is not a
17 responsive pleading and therefore plaintiff might have a right to amend. See St.
18 Michael's Convalescent Hospital v. California, 643 F.2d 1369, 1374 (9th Cir. 1981).
19 Even after a complaint has been amended or a responsive pleading has been served,
20 the Federal Rules provide that leave to amend should be freely given "when justice so
21 requires." FRCP 15(a)(2). These principles require that plaintiff's counsel should
22 carefully evaluate defendant's contentions as to the deficiencies in the complaint and
23 the moving party should agree to any amendment that would cure the defect.

24 b. **Applications and Stipulations to Extend Time.** Applications to
25 extend the time to file any required document or to continue any hearing, Final
26 Pre-Trial Conference or Trial must set forth: (1) the existing due date or hearing date,
27 as well as the discovery cut-off date, the Final Pre-Trial Conference date, and the
28 Trial date; (2) specific, concrete reasons showing good cause for the extension; and

(3) whether there have been prior requests for extensions and whether these requests were granted or denied by the Court.

c. **Submission of Documents for Judge's Signature to Chambers via Email.** All applications and stipulations shall be accompanied by a proposed order. After the application/stipulation and proposed order have been filed electronically, counsel shall email the PDF version of the application/stipulation and a WordPerfect or Microsoft Word version of the proposed order to chambers at vbf_chambers@cacd.uscourts.gov. The subject line of the email should include the case name and case number.

DATED: November 20, 2009


VALERIE BAKER FAIRBANK
United States District Judge